

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---------------------------------------|---|-----------------|
| MARC POKEMPNER, |) | |
| |) | |
| Plaintiff, |) | NO. 10-cv-8297 |
| -vs- |) | |
| |) | JUDGE DARRAH |
| POLARIS IMAGES CORP. a New York |) | |
| corporation, and DOE I through DOE V, |) | MAG. JUDGE KEYS |
| |) | |
| Defendants. |) | |

DECLARATION OF MATTHEW A. KAPLAN

I, MATTHEW A. KAPLAN, declare as follows:

1. I am a partner of the law firm of Cowan, DeBaets, Abrahams & Sheppard LLP, counsel to Defendant Polaris Images Corporation ("Polaris ") in this proceeding. I submit this declaration in support of Polaris' Motion for Summary Judgment in this action. The matters stated in this Declaration are true of my own knowledge, and if called as a witness, I could competently testify thereto.
2. Attached hereto as Exhibit A is a copy of Plaintiff's Complaint, filed December 30, 2010.
3. Attached hereto as Exhibit B, and bearing Plaintiff's bates number MPK.0015, is a true and correct copy of an e-mail exchange produced by Plaintiff between Katie Hogan of Obama for America ("Hogan") and Plaintiff, occurring between the dates of March 1, 2008 and March 4, 2008.
4. Attached hereto as Exhibit C, and bearing Plaintiff's bates numbers MPK.129 through MPK.142, is a true and correct copy of Plaintiff's Copyright Registration No. VA 1-420-045 and accompanying specimens produced by Plaintiff.
5. Attached hereto as Exhibit D, and bearing Plaintiff's bates number MPK.0012, is

a true and correct copy of an e-mail exchange produced by Plaintiff between Dan Green, then Senior Producer of ABC News *Nightline*, (“Green”) plaintiff Marc PoKempner (“Plaintiff”), and Hogan dated March 1, 2008.

6. Attached hereto as Exhibit E, and bearing Plaintiff’s bates number MPK.0016, is a true and correct copy of an e-mail exchange produced by Plaintiff between Plaintiff, Hogan, and Green dated March 6, 2008.

7. Attached hereto as Exhibit F, and bearing Plaintiff’s bates number MPK.0017, is a true and correct copy of an e-mail from produced by Plaintiff between Myrna Michel, then of ABC News *Nightline* to Plaintiff dated March 6, 2008.

8. Attached hereto as Exhibit G, and bearing Plaintiff’s bates numbers MPK.0020 through MPK.0021, is a true and correct copy of an e-mail exchange produced by Plaintiff between Plaintiff and representatives of ABC News *Nightline* and Obama for America, occurring between the dates of March 6, 2008 and March 7, 2008.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: New York, New York
March 1, 2012

s/ Matthew A. Kaplan
MATTHEW A. KAPLAN

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARC POKEMPNER,

Plaintiff,

-VS-

THE ASSOCIATED PRESS,
a New York n/f/p corporation, and
POLARIS IMAGES, an entity of unknown,
origin, and DOE I through DOE V,

Defendants.

JURY DEMANDED

10cv8297
JUDGE DARRAH
MAG. JUDGE KEYS

FILED
DEC 30 2010
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

COMPLAINT

Plaintiff, MARC POKEMPNER, by his attorney, MARK H. BARINHOLTZ, P.C.,
complains against defendants, and each of them, and alleges:

Jurisdiction and Venue

1. This Court has jurisdiction over this case under 28 U.S.C. § 1338(a) and (b),
§ 1367, and § 1400(a). Venue is properly laid in this District under 28 U.S.C. § 1391(b) and (c).

Parties

2. Plaintiff, MARC POKEMPNER ("PoKempner") is an experienced professional
photographer, located in Chicago, Illinois. At all times relevant herein, PoKempner has been
engaged in the business of photojournalism. PoKempner conducts business under his own proper
name, a designation which he uses as a means of source identification for his photography and
photographic services.

3. Defendant, THE ASSOCIATED PRESS ("AP") is, upon information and belief, a
not-for-profit corporation organized under the laws of New York, and has at all times relevant
been engaged in the news and stock photography business worldwide and within this District. AP
owns and operates an online photo database known as AP Images ("AP Images") devoted to
licensing and otherwise marketing photographic images to an extensive range of customers. AP
maintains a bureau office in Chicago, Illinois, and may otherwise be found in this District.

4. Defendant, POLARIS IMAGES ("Polaris") is, upon information and belief, an entity of unknown origin, and has at all times relevant been engaged in the news and stock photography business worldwide and within this District. Polaris owns and operates an online photo database known as Polaris Images ("Polaris Images") devoted to licensing and otherwise marketing photographic images to an extensive range of customers. Upon information and belief, Polaris maintains systematic and continuous business contact with photographers and customers in Chicago, Illinois, and may otherwise be found in this District.

5. On information and belief, one or more persons and/or firms who have done business in, caused injury to plaintiff's property in, or which otherwise are located or may be found in this District, but whose identities and/or roles in connection with the circumstances complained of herein are not fully known or disclosed to plaintiff as of the filing of this action, are herein named as defendants DOE I through DOE V, and are either affiliated with or otherwise directly or indirectly supervised, participated in or financially benefitted from the unlawful dissemination and exploitation, *inter alia*, of the Infringed Work(s) as hereinafter alleged.

Background

6. PoKempner has been engaged as an independent photojournalist since approximately 1972 through the present. During that period he has created images of lasting value of many subject matters and events, particularly political, social and cultural ones in and around Chicago, and worldwide. Several of PoKempner's photographs as reproduced in *The New York Times*, and *The New Yorker* magazine are attached hereto as group Exhibit "A".

7. At or about Fall 1995, PoKempner was contacted by personnel from a local publication *The Chicago Reader* to provide photographic reportage, and to license certain of PoKempner's photographs to be created thereby, depicting a young Illinois politician, Barack Obama, and events, *inter alia*, surrounding his run for the Illinois state senate.

8. During that time, PoKempner created a series of photographs depicting certain of

Obama's campaign activities in Chicago, namely, leafleting and greeting voters for support, and collecting signatures for his nominating petition, in the neighborhoods of his district.

PoKempner's photographs are hereinafter referred to as "the Work(s)" or "the Work" as the context requires.

9. Among the images created by PoKempner are an image of Obama shaking hands with neighborhood children (the "Handshake" image) and an image depicting Obama speaking with a woman in a beret about a leaflet (the "Petition" image). Those images are also hereinafter referred to as the Infringed Work(s), as the context may require. Copies of the Handshake image and the Petition image are reproduced and attached hereto as Complaint Exhibits "B" and "C".

10. Each time he submitted a Work for publication, PoKempner communicated conditions for such use and license of his imagery, and it was then and there and at all times relevant understood and agreed by various media outlets, including *The Chicago Reader*, that use of each Work be limited to reproduction for certain times and uses only, and that other uses for the images could be granted, if at all, only by PoKempner's further permission.

11. It was further understood and agreed by prospective licensee(s) of the Work(s) that the aforesaid licenses were conditioned upon authorship and source attribution of the photographic images in PoKempner with a credit line to run adjacent to the particular licensed image, such credit line to prominently and clearly identify Marc PoKempner as the creator and source of the photographic Work(s).

12. It was further understood and agreed by prospective licensee(s) that, other than the aforesaid licenses, the authorship and copyright ownership, and all copyright rights, title and interest in the Works, would remain exclusively with PoKempner.

13. At or about Fall 1995, PoKempner created the Works, and made them available to *The Chicago Reader*, pursuant to the foregoing license. One of PoKempner's Works, including accompanying credit attribution, as it appeared on the front page of *The Chicago Reader*, December 8, 1995 edition, is attached hereto as Exhibit "D".

14. The Work(s) were intended by PoKempner as a means of prominently presenting the personality depicted, and from time to time were used by publishers, including as a cover shot, for the promotional purpose of generating interest in sales of the pertinent publications. *See*, Exhibits "A" and "D" hereto.

15. At or about 2008, Barack Obama was running as the Democratic candidate for election to the office of President of the United States.

16. At or about that time, and on information and belief at times prior thereto, both AP Images and Polaris Images were operating their stock photography business through digital and otherwise automated means primarily via the Internet, through websites known as *apimages.com*, and, *polarisimages.com*, respectively.

17. At or about Spring 2008, PoKempner became aware that his Handshake image was being exploited on national broadcast television, *ie.* in an episode of ABC-TV's *Nightline* program. At various times thereafter, as described hereinbelow, during the rest of the 2008 campaign year, and through and after the election, PoKempner discovered that both the Handshake image and the Petition image, or versions thereof, were being used without his permission. Such unauthorized uses included but were not limited to print publications and dissemination via cable news media. In most cases, PoKempner had not granted permission to use his Works or any of them, including the Infringed Works in such media or otherwise. Examples of some of such unauthorized uses are attached hereto as group Exhibits "E" and "F".

18. At or about May 12, 2008, the day after the publication of one of PoKempner's Works on the front page of *The New York Times*, PoKempner was contacted in Chicago by a representative of Polaris Images who had seen the publication. (Exhibit "A" hereto.) Polaris purportedly was seeking to represent PoKempner and his Work(s) as an agent, and attempted to obtain his agreement in that regard. PoKempner declined. Upon information and belief, Polaris Images had already incorporated PoKempner's Work(s) into Polaris' archives, but failed to disclose such fact to PoKempner.

19. By the time of the national election in November 2008, and at various times thereafter, PoKempner learned that AP Images and Polaris Images, through their respective websites, had caused or contributed to cause PoKempner's Work(s), and in particular the Handshake image (via Polaris) and the Petition image (via AP) ("the Infringed Work(s)), to be copied and infringed by various means, including but not limited to, (i) by displaying reproductions of the Infringed Work(s) for purposes of advertising the licensing and sales of the photos being offered on the AP Images and Polaris Images websites, (ii) by disseminating such reproductions of the Infringed Work(s) worldwide electronically and in digital form through means of automated systems and otherwise via the Internet, (iii) by distributing copies of the Infringed Work(s) as reproduced on AP Images' or Polaris Images' websites through digital means as the purported licensor, and further (iv) on information and belief, by purporting to license sales of the Infringing Work(s) to third parties to maximize sales not only of the Infringed Work(s), but the publications in which they were wrongfully reproduced over the Internet and otherwise (the "Infringing Uses"), but without any permission or authorization from PoKempner.

20. That the defendants' Infringing Uses of the Infringed Work(s), or such of them as are known to plaintiff as of the filing of this action, are or were displayed on and offered for, licensing from the AP Images' and Polaris Images' websites visually, prominently and are thereby calculated to serve the same creative and promotional goals for AP and Polaris as employed by *The Chicago Reader*, or *The New York Times*, namely, as a means of attracting attention and driving sales.

21. At all times relevant, the results of PoKempner's photographic services and the Infringed Work(s) were carefully selected by the defendants to have significant impact and emphasis, and to serve as a catalyst to enhance sales of the various publications, *inter alia*, for which the Work(s) were licensed, and desired to be exploited by said defendants' licensees, and all as a means to multiply their own economic gain.

22. No license has been granted by PoKempner, to either AP or Polaris, to use the

Works or any one of them for any purpose.

23. Since Spring 2008, PoKempner has discovered that the illegal licenses granted and/or assumed by one or more of the named defendants, appear to have extended to various firms, including but not limited to broadcast media, publishers, and on information and belief various other Internet-based publications, all of which purport to be authorized to use the Work(s) and to display PoKempner's Work(s) as a tool to generate sales, but all without any permission or authorization from PoKempner.

24. In addition, PoKempner has become aware that defendants, by their failure to obtain PoKempner's permission, have thereby evidenced their intentions to, and have in fact, *inter alia*, improperly miscredited or otherwise omitted to attribute authorship and source of the Infringed Work(s) in PoKempner, by widespread dissemination of the Infringed Work(s) in the Infringing Uses, and otherwise, and, upon information and belief, only after deliberately disregarding, omitting and/or removing the photo credit and other source information that PoKempner had bargained for, and which was accorded to PoKempner in connection with originally licensed reproductions of the Work(s). (Exhibits "A" & "D" hereto.)

25. Although PoKempner has sought to, and has, resolved a number of the infringements with certain purported licensees who obtained the Infringed Work(s) from AP Images and/or Polaris Images, PoKempner is informed and believes there are a substantial number of Infringing Uses which remain unresolved and/or undisclosed by AP and/or Polaris, and for which defendants remain unwilling to do so.

26. PoKempner has complied with all registration and deposit requirements of the federal copyright laws, and has obtained copyright registration for each of his copyrighted Works under Certificate of Registration No. VA 1-420-045, effective September 4, 2009. A copy of the Registration, which includes the Infringed Works, is attached hereto as Exhibit "G".

COUNT I
(Title 17 U.S.C. § 1202, Digital Millennium Copyright Act)

27. Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraphs 1 through 26 hereof, and for this Count I alleges against defendants, and each of them, as follows.

28. The original authorized publication in *The Chicago Reader* wherein Works by PoKempner appeared, including a version of the Handshake image, attributed authorship and source of the photographic Works in PoKempner on the front page. (Exhibit "D" hereto.) In addition, at or about Spring 2008, when a version of the Handshake image was published on the front page of *The New York Times*, authorship in the photo was attributed to PoKempner, which prompted Polaris to contact him as alleged aforesaid. (Exhibit "A" hereto.) Thus, defendants knew or had reasonable grounds to know PoKempner was the true author of the Work(s).

29. Each Work PoKempner submitted to a prospective licensee, including but not limited to *The Chicago Reader*, or *The New York Times*, was embodied within a high quality photographic print and/or digital file. Each submission embodying the photos, whether in high quality print or digital form, contained identifying information including PoKempner's name, a description of the Work, the trade name "Marc PoKempner," as well as PoKempner's copyright notice and other conditions, as means of identifying PoKempner as the author, owner and the source of the imagery, and the conditions of licensing which were intended by PoKempner to run with the Work(s). ("the identifying information")

30. That in the process of rendering the high-quality prints and/or creating the digital files embodying his copyright protected images, PoKempner at all times relevant employed the use of computer software programs and/or automated technological processes which enabled him to attach, affix and otherwise embed the copyright management information aforesaid directly on or into the particular image(s) involved here, particularly the Infringed Work(s).

31. That the name "Marc PoKempner" and the other data and restrictions on use were at all times relevant conveyed in connection with the Work(s) by PoKempner, embedded as metadata

or otherwise communicated in association with the Work(s), to prospective licensees with the intent by PoKempner that they be used to identify the creator and owner of the physical objects (the photographic prints or the digital files) as well as the images and copyrights therein, and otherwise to identify the source and conditions of use of the Works.

32. That pursuant to 17 U.S.C. § 1202(c) of the Digital Millennium Copyright Act of 1998 ("DMCA") the identifying information so conveyed is deemed to be and constitutes "copyright management information" under the DMCA.

33. That defendants, and each of them, had knowledge or reasonable grounds to know that PoKempner intended, and previous authorized licensees had agreed, that such copyright management information was to be faithfully reproduced in connection with any reproduction of PoKempner's Work(s).

34. Notwithstanding defendants' knowledge, however, at all times relevant, upon information and belief the infringing reproductions of the Works in the Infringing Uses in the AP Images' and Polaris Images' stock photo databases removed the name "Marc PoKempner" and PoKempner's copyright notice, as well as the title of the Work(s) and the limiting conditions of reproduction, and instead altered the copyright management information by claiming copyright and source in the name of defendants, or either of them, or otherwise, and deliberately disregarded, omitted and/or removed PoKempner's name and trade name, and his copyright notice, the description and the limiting conditions of reproduction, *inter alia*, entirely from being connected with the Work(s) as used on and within the defendants' several websites, and the uses purportedly licensed by them.

35. That in digitally transferring and uploading PoKempner's Work(s) into their respective websites, defendants, and each of them, upon information and belief, employed various means, including technological measures of automated features of systems including computer driven devices, to digitally transform PoKempner's Work(s) into electronically transmittable computer files, which were then stored digitally on the servers of the respective defendants, for

unauthorized display via the Internet, and offered for illegal licensing via transmission digitally through automated means and otherwise, to numerous potential third party licensees via the Internet.

36. That in addition to removing and altering copyright management information aforesaid, defendants, and each of them, upon information and belief, distributed or imported for distribution the altered copyright management information knowing that it had been altered and/or removed without the authority of the copyright owner, PoKempner, or the law; and further, the defendants, and each of them distributed or imported for distribution copies of the Infringed Work(s), knowing that copyright management information had been removed or altered without the authority of the copyright owner, PoKempner, or the law.

37. That at all times relevant, defendants and each of them, in doing the acts and things complained of herein, intended to induce, enable, facilitate or conceal an infringement and violation of PoKempner's copyright attribution, integrity and ownership rights under Title 17 U.S.C. § 1202(a) and § 1202(b), and otherwise against unauthorized copying, dissemination and display of his Work(s), *inter alia*, under Title 17 U.S.C. § 501.

38. That defendants, and each of them, have thereby violated the Digital Millennium Copyright Act, and PoKempner's rights thereunder, and he has been caused to and has thereby suffered and sustained substantial financial damage and irreparable harm, for which plaintiff's remedy at law is inadequate.

COUNT II
(Title 15 U.S.C. § 1125(a), Lanham Act § 43(a))

39. Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraphs 1 through 38 hereof, and for this Count II alleges against defendants, and each of them, as follows.

40. That the true, original publications of the Works, or ones substantially similar thereto, or the media by which the images were transmitted, *inter alia*, attributed authorship and

source of the photographic Works in PoKempner. Thus, defendants knew or had reasonable grounds to know that PoKempner was the true and lawful author and copyright owner of those Works. *See*, Exhibits "A" and "D" hereto.

41. Notwithstanding, at all times relevant, the infringing reproductions of the Works in the Infringing Uses claimed copyright in the name of defendants or otherwise and/or deliberately disregarded, omitted and/or removed PoKempner's name entirely from being associated with his Works as reproduced in various of the Infringing Uses, including *e.g.*, the Multi-Media Int'l publication *History Made! Obama the Forty-fourth President*, and the Penguin Group Publication *Michelle Obama – First Mom*. Copies of the mis-credited attributions from those respective publications are attached hereto as part of group Exhibit "F", and Exhibit "G".

42. In addition, defendants, by their deliberate reproduction of the Works without PoKempner's permission, evidenced their intentions to do and/or omit to do one or more of the following, *inter alia*: (i) to alter and/or modify PoKempner's Works without his input or permission, (ii) to reproduce and publish the infringing Works without any editorial participation from PoKempner so that the infringing uses do not reflect his vision in connection with the selection or manner of use(s) of PoKempner's own photographic Works, and (iii) to tout and/or seek to associate the photographic Works of PoKempner, their source and/or authorship, and the goodwill thereof, with the trade names, trademarks, and designations of the Associated Press or Polaris Images, *inter alia*, and all without the permission, consent, authorization or approval of plaintiff.

43. In addition, defendants, either intentionally and/or recklessly, caused PoKempner's Works to be widely disseminated in derogation of their duties to ensure that PoKempner's name and goodwill be associated with his Works, including the purposes for which the Works were originally licensed for use.

44. In addition, upon information and belief, defendants have each offered PoKempner's Work(s) up for licensing at rates and prices which undercut, undermine and

otherwise disparage the true value of the Work(s), and thereby constitute false and misleading statements of fact concerning the reasons for such price abatement.

45. Consequently, the infringing uses and reproductions suggest, *inter alia*, (i) that the lawful copyright owner PoKempner has endorsed and approved of such selection and use(s) of his Works, or (ii) that defendants and/or some other person or firm is the creator and copyright owner of the Works, when in fact those suggestions, impressions and identifications are not true.

46. Defendants' acts have been, and are threatened to be, committed with the intent to pass off defendants' infringing uses, and in particular certain of the photographic Works reproduced therein, as being those of defendants and/or as being dissociated from plaintiff "Marc PoKempner," and all to the deception of the purchasing public and others in violation of the Lanham Act, § 43(a) thereof.

47. Defendants' wrongful use and/or misuse of PoKempner's name, identity and services, and misuse of his entitlement to receive proper photographic authorship and/or source attribution credit, are uses in commerce, and constitute acts of unfair competition and an infringement of plaintiff's common law and statutory rights in his and his firm's name, identity and services.

48. Defendants have engaged, and/or have threatened to continue to engage, in the aforementioned conduct with the intent to deceive the purchasing public and others, or otherwise having the likelihood that such deception will be the result.

49. Defendants' acts, practices and conduct constitute unfair competition, false or misleading designation, description or representation, false advertising, and/or unfair and deceptive trade practices in that they are likely to cause confusion and mistake by the purchasing public and/or others with respect to the professional services of PoKempner, all in violation of the Lanham Act, § 43(a) thereof.

50. The aforesaid false and misleading designations and impressions have caused, and are likely to continue to cause, plaintiff irreparable harm and economic injury, for which plaintiff's

remedy at law is inadequate.

COUNT III
(Statutory Consumer Fraud)

51. Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraphs 1 through 50 hereof, and for this Count III alleges against defendants, and each of them, as follows.

52. Defendants' aforesaid acts, practices and conduct constitute unfair and deceptive business practices and consumer fraud in violation of the Consumer Fraud and Deceptive Business Practices Act, Illinois Compiled Statutes, 815 ILCS 505/2, § 2.

53. As a direct and proximate result of the aforesaid acts, practices and conduct, plaintiff is likely to continue to be substantially injured in his business, including his reputation, resulting in lost income and diminished goodwill.

54. By reason of the foregoing, plaintiff has been and will be injured in an amount not yet ascertained.

COUNT IV
(Statutory Deceptive Trade Practices)

55. Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraphs 1 through 54 hereof, and for this Count IV alleges against defendants, and each of them, as follows.

56. Such conduct and acts aforesaid by defendants constitute unfair and deceptive trade practices within the meaning and intendment of the Illinois Compiled Statutes, Chapter 815, Sections 510/2, § 2(2), § 2(3), § 2(5), § 2(8), § 2(11) and § 2(12), thereof.

57. Plaintiff has no adequate remedy at law, and the aforesaid false and misleading descriptions and misrepresentations have caused, and are likely to continue to cause, plaintiff economic injury and irreparable harm.

COUNT V
(Common Law Unfair Competition)

58. Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraphs 1 through 57 hereof, and for this Count V alleges against defendants, and each of them, as follows.

59. Defendants' aforesaid acts, practices and conduct are likely to cause confusion or mistake in the minds of the purchasing public and others, and constitute common law unfair competition by defendants against plaintiff.

60. As a direct and proximate result of the aforesaid acts, practices and conduct, PoKempner has been and/or is likely to be substantially injured in his profession, including his reputation, resulting in lost income and diminished goodwill and reputation.

61. PoKempner has no adequate remedy at law in that his name, identity and services, and as further identified with PoKempner, are unique and represent to the purchasing public and others PoKempner's identity, reputation and goodwill, such that damages alone cannot fully compensate PoKempner for defendants' misconduct.

62. That the aforesaid false and misleading descriptions and misrepresentations have caused, and are likely to continue to cause, plaintiff economic injury and irreparable harm.

COUNT VI
(Copyright Infringement vs. AP)

63. Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraphs 1 through 62 hereof, and for this Count VI alleges against defendant AP, as follows.

64. That as owner of the AP Images website, AP, on information and belief, reserved for itself and exercised significant rights of control over and/or participation in the preparation, web design, marketing and Internet distribution for the licensing of photographic images stored therein, as well as the financial benefit to be derived therefrom.

65. Approximately at Spring 2008, and at all times through the filing of this action, defendant AP infringed PoKempner's Petition image Work, and his exclusive rights therein, by various means, including but not limited to, the aforesaid reproductions, publications, displays and disseminations of the copyrighted Work, without having first obtained a license therefor. (Exhibit "E" hereto.)

66. That such acts aforesaid by defendant were for its own commercial use and benefit and infringed upon plaintiff's exclusive copyright rights in the Petition image Work.

67. That although such copyright infringement(s) aforesaid appear to have temporarily ceased as of the filing of this action, upon information and belief such infringements are likely to resume and continue if not permanently enjoined.

68. That by virtue of the acts hereinabove alleged, defendant AP has infringed plaintiff's copyrights, and plaintiff has been caused to and has thereby suffered and sustained irreparable harm and economic injury.

COUNT VII
(Copyright Infringement vs. Polaris)

69. Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraphs 1 through 68 hereof, and for this Count VII alleges against defendant, Polaris as follows.

70. That as owner of the Polaris stock photography website, Polaris, on information and belief, reserved for itself and exercised significant rights of control over and/or participation in the preparation, web design, marketing and Internet distribution for the licensing of photographic images stored therein, as well as the financial benefit to be derived therefrom.

71. Approximately at Spring 2008, and at all times through the filing of this action, defendant Polaris infringed PoKempner's Handshake image Work, and his exclusive rights therein, by various means, including but not limited to, the aforesaid reproductions, publications,

displays and disseminations of the copyrighted Work, without having first obtained a license therefor. (Exhibit "F" hereto.)

72. That such acts aforesaid by defendant were for its own commercial use and benefit and infringed upon plaintiff's exclusive copyright rights in the Handshake image Work.

73. That although such copyright infringement(s) aforesaid appear to have temporarily ceased as of the filing of this action, upon information and belief such infringements are likely to resume and continue if not permanently enjoined.

74. That by virtue of the acts hereinabove alleged, defendant Polaris has infringed plaintiff's copyrights, and plaintiff has been caused to and has thereby suffered and sustained irreparable harm and economic injury.

COUNT VIII
(Liability vs. Doe I through Doe V)

75. Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraph 1 through 74 hereof, and for this Count VIII alleges against defendant(s) Doe I through Doe V, as follows.

76. On information and belief, one or more individual(s), firm(s), affiliate(s) or contractor(s) acted in concert with defendants, or either of them, and were a conscious, active and/or dominant force causing or contributing to cause, and which resulted in the unlawful infringements and unfair competition herein alleged.

77. On information and belief, those individuals, firms, affiliates and/or contractors personally or directly contributed to, authorized and/or participated in infringing and/or unfairly competing against PoKempner's Works, and his exclusive rights therein, including his rights to attribution and integrity, by the various means aforesaid, *inter alia*.

78. That such tortious acts were for their own individual gain and benefit, as well as the gain and benefit of their firms, affiliates or contractors, and infringed upon and/or unfairly

competed against PoKempner's exclusive copyrights and attribution rights in the Work(s).

79. That by virtues of such acts and/or omissions, such persons and firms are either directly, contributorily and/or vicariously liable for the unlawful infringements aforesaid.

80. That such infringement and unfair competition aforesaid has continued through the filing of this Lawsuit, is ongoing and is likely and/or is threatened to continue.

81. That by virtue of the acts hereinabove alleged, defendants DOE I through DOE V infringed PoKempner's copyrights and/or unfairly competed against PoKempner, and he has been caused to and has thereby suffered and sustained irreparable harm and economic injury.

COUNT IX

(Statutory Damages, Exemplary Damages, & Attorney Fees)

82. Plaintiff incorporates by reference and realleges each and every allegation contained in Paragraphs 1 through 81 hereof, and for this Count IX alleges against defendants, as follows.

83. Plaintiff seeks to recover the cost of enforcement of this legal action, in part including attorney fees, and exemplary damages, on the grounds hereinafter alleged.

84. That despite that knowledge aforesaid, AP and/or Polaris, acting in concert with various of the DOE defendants, wilfully and deliberately engaged in the foregoing infringements.

85. Defendant(s)' deliberate and wilful conduct has required plaintiff to employ legal counsel to file this action for violations including of the Copyright Act and the Digital Millennium Copyright Act of the United States.

86. For the violation of PoKempner's copyright rights in copyright management information under 17 U.S.C. § 1202 as allowed pursuant to 17 U.S.C. § 1203, plaintiff is entitled to the recovery of his costs of enforcement, including attorney fees, because the DMCA provides for such relief separate and apart from traditional Chapter 5 violations of the Copyright Act.

87. That the Digital Millennium Copyright Act, § 1203(c)(3)(B) thereof, provides, *inter alia*, that infringement of copyright rights under § 1202 is punishable by an award of statutory

damages in amounts up to and including \$25,000.00 for each violation.

88. Therefore, defendants AP and Polaris, their respective officers, agents and employees who personally or directly contributed to, authorized and/or participated in infringing PoKempner's Works and violating his rights under the DMCA, and various of the DOE defendants, and each of them jointly and severally, are liable to plaintiff for such reasonable attorney fees, and exemplary damages, incurred in this action as may be allocated to the applicable Works and violations of the DMCA.

89. In addition, defendants' deliberate and wilful conduct has required plaintiff to employ legal counsel to file this action for violations including of the Lanham Act, and the Illinois Unfair and Deceptive Practices Act and for Consumer Fraud.

WHEREFORE, plaintiff, MARC POKEMPNER, prays for findings of infringement, and violations of the Digital Millennium Copyright Act and unfair competition, and judgment in his favor and against defendants, and each of them jointly and severally, as follows:

A. That defendants be required to deliver up to plaintiff or destroy all copies of the Work(s), in all media and versions, and all print media, and electronic and digital files, embodying the copyrighted photographic Works, including all printed versions and other materials embodying or reproducing the Works;

B. That defendants be required to pay to plaintiff such actual damages as plaintiff has sustained in consequence of defendants' infringements, and other unlawful acts, and to account for all gains, profits and advantages derived by defendants therefrom, or such statutory damages for all infringements and wrongs as shall appear proper within the provisions of the copyright, trademark and deceptive practices laws;

C. That such damages otherwise assessed be increased if infringements and wrongful acts are found to be committed willfully;

D. That exemplary and/or punitive damages be assessed if infringements and acts of

unfair competition, and other wrongful acts, including but not limited to consumer fraud and deceptive business practices, are found to be committed knowingly;

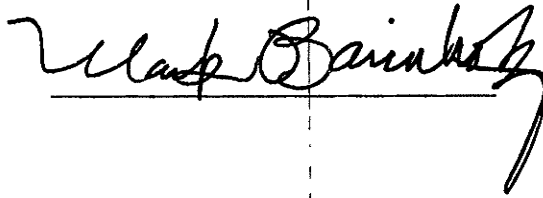
E. That the Court grant such other and further relief as is reasonable to remedy defendant(s)' wrongful acts by any means, either at law or in equity, including but not limited to injunction, impounding and reasonable disposition of all infringing articles;

F. Together with reasonable attorney fees and plaintiff's costs, plus interest.

PLAINTIFF DEMANDS TRIAL BY JURY

MARC POKEMPNER, Plaintiff.

By

A handwritten signature in black ink, appearing to read "Mark Barinholtz", is written over a horizontal line.

ATTORNEYS FOR PLAINTIFF:

Mark Barinholtz
MARK H. BARINHOLTZ, P.C.
55 West Monroe Street
Suite 3600
Chicago, IL 60603
(312) 977-0121

Exhibit "A"

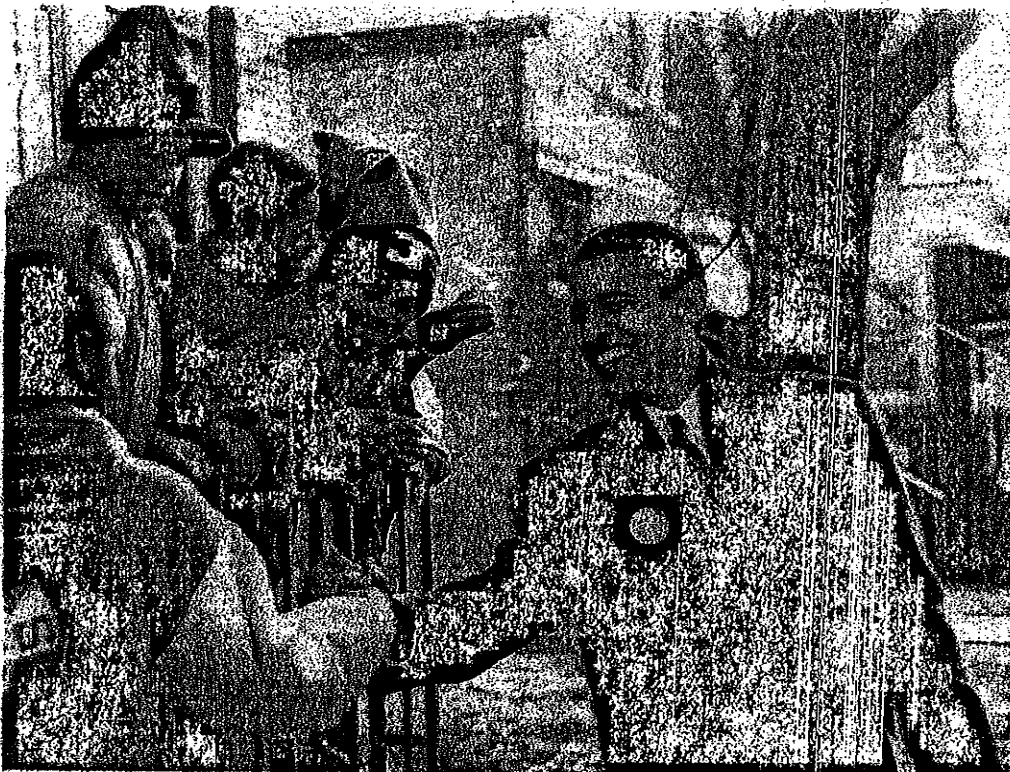
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SUNDAY, MAY 11, 2008



LESSONS LEARNED Barack Obama campaigning for the Illinois Senate in 1996, a race he easily won. Mr. Obama's tough test in the primary season, *Week in Review*.

Pragmatic Politics, Forged on the South Side

By JO BECKER
and CHRISTOPHER DREW

THE LONG RUN
A Chicago Base

In August 1999, Barack Obama strolled amid the floats and bands making their way down Martin Luther King Drive on Chicago's South Side. Billed as the largest African-American parade in the country, the summer rite was a draw over the years to boxing heroes like Muhammad Ali and jazz greats like Duke Ellington. It was also a must-stop for the city's top politicians.

Back then, Mr. Obama, a state senator who was contemplating a run for Congress, was so little-known in the community's black neighborhoods that it was hard to find more than a few dozen people to walk with him, recalled Al Kinde, one of

to take on the formidable Hillary Rodham Clinton and embark on a long-shot White House run. When the parade wound its way through the South Side that summer, Mr. Obama was its grand marshal.

The secret of his transformation, which has brought him to the brink of claiming the Democratic presidential nomination, can be described as the politics of maximum unity.

He moved from his leftist Hyde Park base to more centrist circles, he forged

To broaden his appeal to African-Americans, Mr. Obama had to assiduously court older black leaders entrenched in Chicago's ward politics while selling himself as a young, multicultural bridge to the wider political world.

"There are some people who say he's not strong enough on this or that, that he's wishy-washy, that he's trying to have it both ways," said Abner J. Mikva, a former congressman and mentor to Mr. Obama. "But he's not looking for how to exclude the people who don't agree with him. He's looking for ways to make the tent as large as possible."

Mr. Obama's ability to replicate the electoral coalition he built in Chicago and

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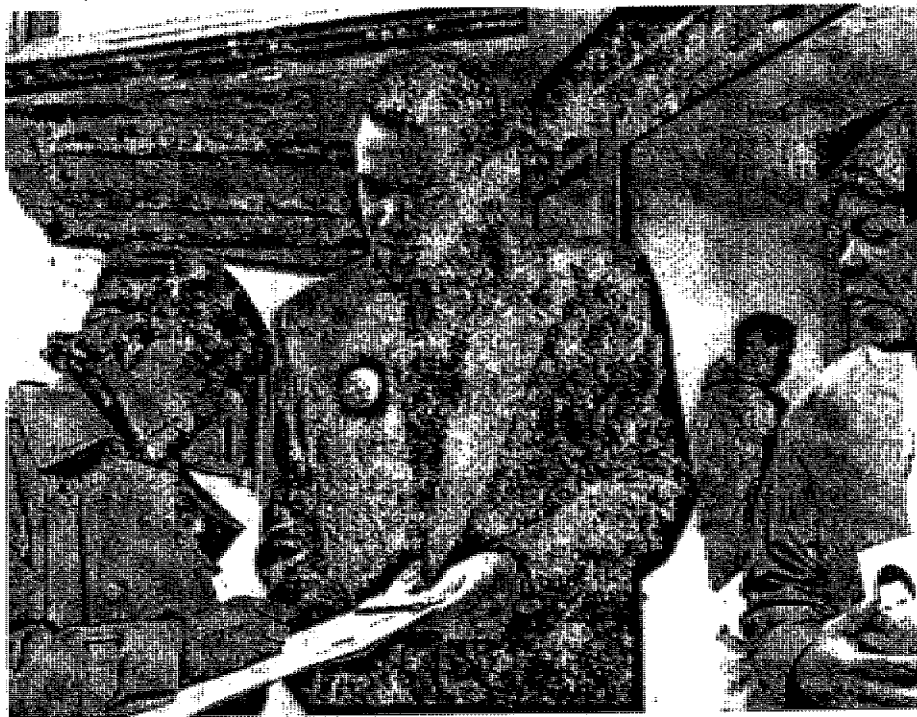
THE POLITICAL SCENE

MAKING IT

How Chicago shaped Obama.

by Ryan Lizza

JULY 21, 2008



Barack Obama on the South Side during his first campaign, for the State Senate. An outsider in Chicago's system, he was meticulous about constructing his own political identity and coalition. Photograph by Marc PoKempner.

Exhibit "B"



Exhibit "C"



Exhibit "D"

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to him future for their combined youth. But when he met with some serious political opponents in his plans, the only jobs he saw they wanted to talk about were drinks and his. Obama got out several orders: some of it passed him, most of it surprised him. One fellow-American elected official suggested that Obama change his name, which he determined from his last American studies was not a good idea. Obama said that he had no plans of changing his name, but he was not sure if he was going to change it or not. He was not sure if he was going to change it or not. He was not sure if he was going to change it or not.

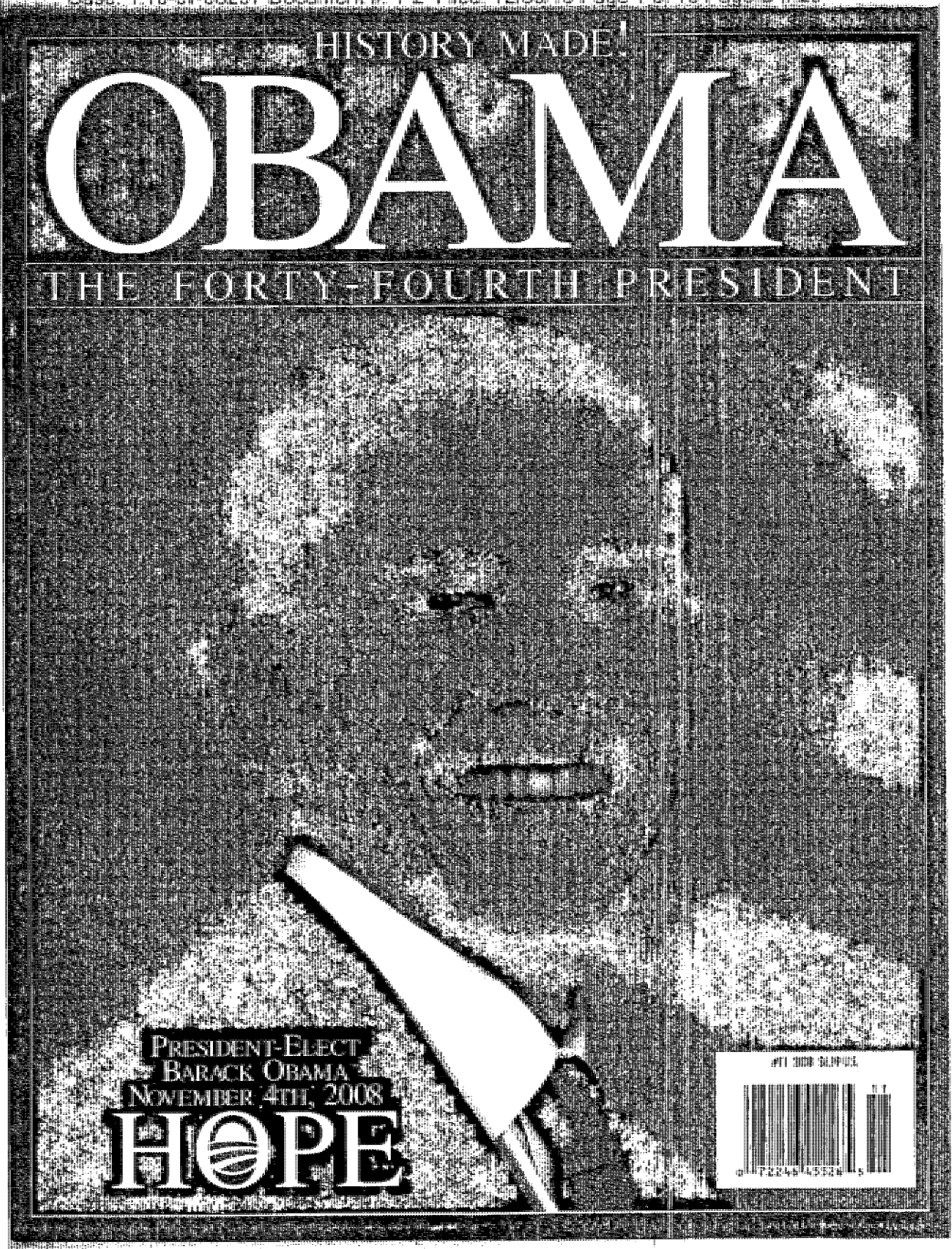
ness by fellow passengers—thus he might be seen indiscreetly, double-checking notes a few days in advance of the election. Another well-meaning adviser suggested merely putting the placards with a flourish in his hand—except that he wasn't technically elected.

"There will be times when for good political reasons," Cushman said, "one has to be superficial. Even superficiality from many different angles—given that good must prevail over evil—may be necessary for a successful revolution." These words were greeted with applause and a

SECRET

Exhibit "E"

Case: 1:10-cv-08297 Document #: 1-2 Filed: 12/30/10 Page 1 of 13 PageID #:29





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OBAMA • THE FORTY-FOURTH PRESIDENT



In 1996, Obama was elected to the Illinois State Senate from the south side neighborhood of Hyde Park, in Chicago. He served as chairman of the Public Health and Welfare Committee when the Democrats regained control of the chamber. The generally conservative Chicago Tribune called him "one of the General Assembly's most impressive members."

Regarded as a staunch liberal during his tenure in the legislature, he helped to author a state Earned Income Tax Credit which provided benefits to the working poor. He also worked for legislation that would cover residents who could not afford health insurance. Speaking up for leading gay and lesbian advocacy groups, he successfully helped pass bills to increase funding for AIDS prevention and care programs.

In 2000, he ran unsuccessfully in the Democratic primary for Illinois' 1st Congressional district against incumbent Representative Bobby Rush, a position that Rush still holds.

After the loss, Obama rededicated his efforts to the state Senate. He authored one of the most progressive death penalty reform laws in the nation, under the guidance of his mentor, former U.S. Senator Paul Simon. He also pushed

through legislation that would force insurance companies to cover routine mammograms.

In 2004, Obama decided to run for the U.S. Senate seat held by Sen. Peter Fitzgerald. After both Fitzgerald and his predecessor Braun decided to not run, the stage was set for a wild campaign. In the Democratic primary, Obama trailed business tycoon Blair Hull and Illinois Comptroller Dan Hynes. However, Hull was soon embroiled by allegations of domestic abuse and was forced out of contention. As Obama's name recognition rose, voters took a liking to the bright, charismatic state senator. He won decisively in the March primary, dispatching the other six candidates easily and winning more than 50 percent of the vote.

Entering the U.S. Senate campaign, Obama had become a national Democratic star. He squared off against former Goldman Sachs partner and teacher Jack Ryan, the winner of the Republican primary. Ryan trailed Obama in the polls, and Obama opened up a twenty point lead after the media brought attention to the fact that Ryan had assigned an aide to stalk Obama. More twists and turns followed, as during the campaign a California court ruling opened custody files from Ryan's divorce from actress Jeri Ryan, in which she alleged that he had brought her without her knowledge to

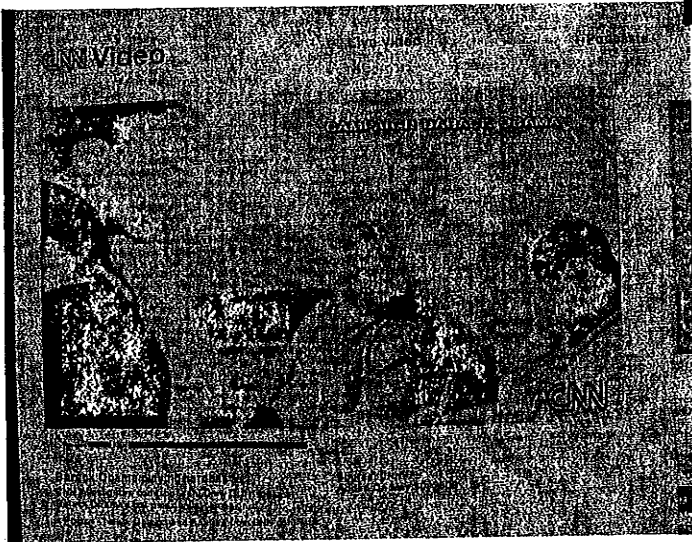
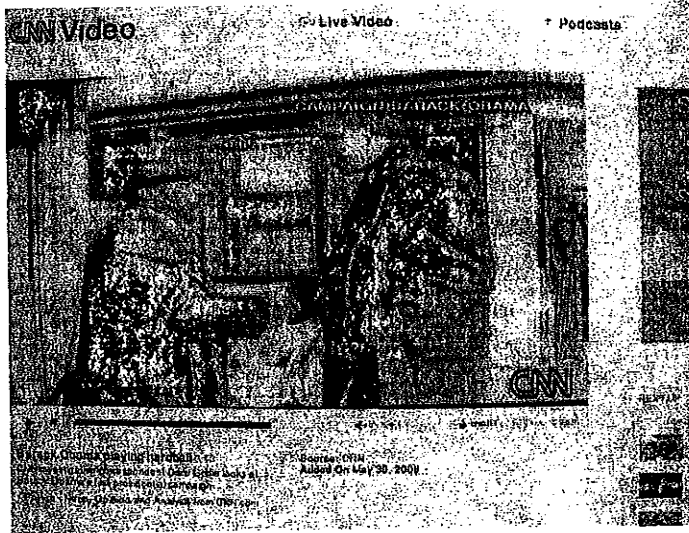
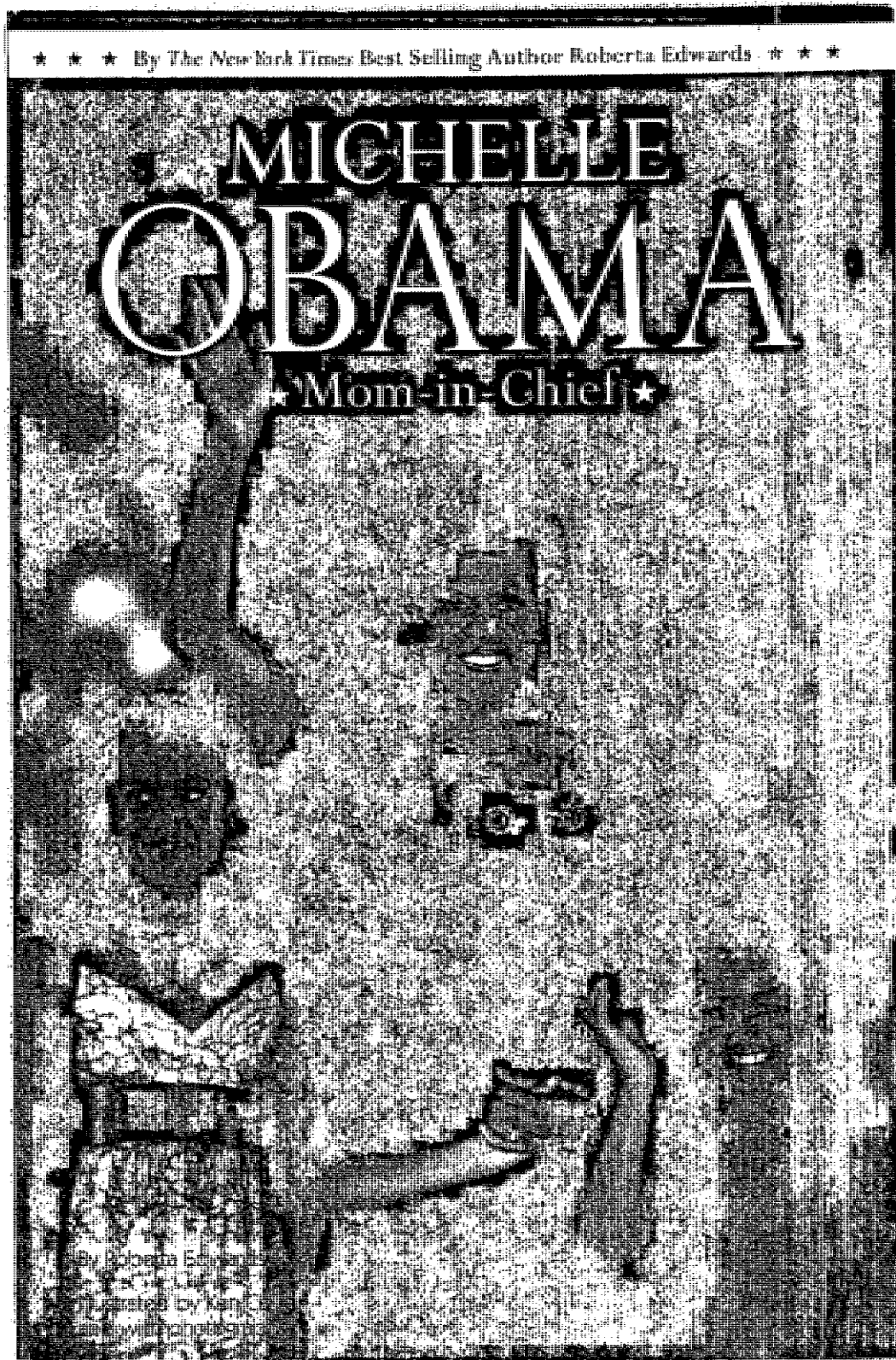


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Exhibit "G"

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This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

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Page 1 of 1
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2 NAME OF AUTHOR **DATES OF BIRTH AND DEATH**
a **Marc Pokempner** Year Born **1948** Year Died **living**
Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No
Author's Nationality or Domicile Name of Country **USA**
OR Citizen of **USA** Domiciled in
Nature of Authorship Check appropriate box(es). See Instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☒ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

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Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR **DATES OF BIRTH AND DEATH**
Marc Pokempner Year Born **1948** Year Died **living**
Was this contribution to the work a "work made for hire"? ☐ Yes ☒ No
Author's Nationality or Domicile Name of Country **USA**
OR Citizen of **USA** Domiciled in
Nature of Authorship Check appropriate box(es). See Instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
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Marc Pokempner, 1453 West Addison St. Chicago, IL 60613
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Page 1 of 1

Case: 1:10-cv-08297 Document #: 1-2 EXAMINED BY WJ Page 11 of 13 PageID #:39

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Marc Pokempner/1453 West Addison/Chicago, IL 60613
St.

b

Area code and daytime telephone number 773 525-4567

Fax number ()

Email marc@pokempner.net

CERTIFICATION I, the undersigned, hereby certify that I am the

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☐ other copyright claimant
☐ owner of exclusive right(s)
☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.

Marc Pokempner

Date 9/1/09

Handwritten signature of

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Name

Marc Pokempner

Number/Street/Apt

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City/State/ZIP

Chicago, IL 60613

- Complete all necessary spaces
- Sign your application in space 8

1. Application form
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CONTINUATION SHEET FOR FORM VA

for Group Registration of Published Photographs

- This optional Continuation Sheet (Form GR/PPH/CON) is used only in conjunction with Form VA for group registration of published photographs.
- This form may not be used as a continuation sheet for unpublished collections. To list individual titles in unpublished collections, use Form CON.
- If you do not have enough space for all the information you need to give on Form VA or if you do not provide all necessary information on each photograph, use this Continuation Sheet and submit it with completed Form VA.
- No more than 50 continuation sheets (or 750 photos) may be used with a single filing fee and Form VA.
- If you submit this Continuation Sheet, clip (do not tape or staple) it to completed Form VA and fold the two together before submitting them.
- Space A of this sheet is intended to identify the author and claimant.
- Space B is intended to identify individual titles and dates of publication (and optional description) of individual photographs.
- Use the boxes to number each line in Part B consecutively. If you need more space, use additional Forms GR/PPH/CON.
- Copyright fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

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UNITED STATES COPYRIGHT OFFICE

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Page 3 of 4 pages

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A

Identification
of Application

IDENTIFICATION OF AUTHOR AND CLAIMANT: Give the name of the author and the name of the copyright claimant in all the contributions listed in Part B of this form. The names should be the same as the names given in spaces 2 and 4 of the basic application.

Name of Author Marc Pokenpner

Name of Copyright Claimant Marc Pokenpner

B

Registration
for Group of
Published
Photographs

COPYRIGHT REGISTRATION FOR A GROUP OF PUBLISHED PHOTOGRAPHS: To make a single registration for a group of works by the same individual author, all published within 1 calendar year (see instructions), give full information about each contribution. If more space is needed, use additional Forms GR/PPH/CON. Number the boxes.

- (1) Title of Photograph "1995.12.02 Obama w-Kids" published in The New York Times
Date of First Publication May 11 2008 Nation of First Publication USA
Description of Photograph Front page of NYT, Barack Obama shaking kids' hands
and (1 copy)
- (2) Title of Photograph "1995.11.09 Obama in office" published in The New York Times
Date of First Publication May 11 2008 Nation of First Publication USA
Description of Photograph pg. 18 of NYT, Barack Obama sitting in his office, photo of Harold Washington on wall.
and (2 copy)
- (3) Title of Photograph "2002.10.01 Obama - Noloquhar" published in The New York Times
Date of First Publication May-October 2008 Nation of First Publication USA
Description of Photograph pg. 19 of NYT; pp. 84, 85 of LIFE's "The American Journey" book of Barack Obama
(3 copy b-c)
- (4) Title of Photograph "1995.12.03 Obama Signatures #5", pub. on CNN Video "Barack Obama Plays Hardball"
Date of First Publication May 30 2008 Nation of First Publication USA
Description of Photograph Barack Obama on steps talking w/woman holding pen and sitting man.
(4 copy)
- (5) Title of Photograph "1995.11.09 Obama Signatures 3", published in The New Yorker
Date of First Publication July 21 2008 Nation of First Publication USA
Description of Photograph pp. 48, 49 of New Yorker, Obama getting signature from older woman in hat.
(5 copy)

- (6) Title of Photograph "2004.03.16#050", published in LIFE's "The American Journey of Barack Obama" **B**
 Date of First Publication October 1 2008 Nation of First Publication USA
 Description of Photograph p. 67 of book, Barack Obama kissing Sasha's hand, at rally, with Michelle Obama holding her.
- (7) Title of Photograph "1995.12.02 Barack Reading to Kids #16", pub. in LIFE (see Above)
 Date of First Publication October 1 2008 Nation of First Publication USA
 Description of Photograph p. 167 of book, Barack Obama reading to kids (3), while sitting on floor.
- (8) Title of Photograph "1995.12.02 Obama - Alleyball", pub. in Newsweek's Commemorative:
 Date of First Publication November 4 2008 Nation of First Publication ~~USA~~ / USA issue "Obama's American Dream"
 Description of Photograph Obama playing ball w/ kids pp. 54, 55 of Newsweek's "Obama's American Dream" Ore
- (9) Title of Photograph "1995.11.09 Obama + Women w/ Beret", published in Multi-Media-Int's (M-M-
 Date of First Publication November 4 2008 Nation of First Publication USA "Obama, the 44th Pres"
 Description of Photograph p. 9 of M-M-I story, Barack walking down street w/ older woman w/ beret and gloves.
- (10) Title of Photograph "1995.12.07 Obama Shaking Hand (2)", pub. in Newsweek's Comm. Issue.
 Date of First Publication November 4 2008 Nation of First Publication USA "Obama's American Dream"
 Description of Photograph pp. 52, 53 of Newsweek's Comm. issue Barack Obama shaking hand w/ man/w/ hat
- (11) Title of Photograph "1995.12.02 Obama w- Kids ALT", pub. on ABC Nightline "The Making of Obama"
 Date of First Publication February 25 2008 Nation of First Publication USA
 Description of Photograph Obama shaking kid's hand, children on porch; Nightline segment photo image

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| Description of Photograph | | |

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1. Application form
2. Identification (ID) to verify or
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3821, 3822, 3823, 3824, 3825, 3826, 3827, 3828, 3829, 3830, 3831, 3832, 3833, 3834, 3835, 3836, 3837, 3838, 38

EXHIBIT B

Loading "RE: PLEASE RESPOND : Fw: Obama Photo on Nightline"

3/19/08 10:47 PM

RE: PLEASE RESPOND : Fw: Obama Photo on Nightline

From: Marc PoKempner <mpokempner@igc.org>
To: Katie Hogan
Cc: Green Dan <Dan.Green@abc.com>
Subject: RE: PLEASE RESPOND : Fw: Obama Photo on Nightline
Date: Mar 4, 2008 5:11 PM

Katie -- I need you to send me the photo in the form it was sent out. I'm not upset about it's distribution - my intention was that it be used, but of course that's how I make my living - usually someone distributing or publishing my work contacts me first and we work out a deal for that use. The photo files I send out have my copyright and also contact information attached in the "metadata" file which is readable in photoshop. Folks who use photos regularly for broadcast or print or online nearly always check that - since after the work is used, negotiations about the price are biased in my favor. Still, I'm in this business for the long term and I want to maintain good relations with both the campaign and the media... You should check to see if the campaign wants the right to distribute the photos I sent them for free (why?) or if I should just negotiate with the media which broadcast it -- and please let me know if it or others of mine were used elsewhere. Anyone who wants to use them should absolutely be encouraged to do so, and to contact me first!

thanks again - Marc

-----Original Message-----

>From: Katie Hogan <khogan@barackobama.com>
 >Sent: Mar 1, 2008 3:24 PM
 >To: Marc PoKempner <mpokempner@igc.org>
 >Subject: RE: PLEASE RESPOND : Fw: Obama Photo on Nightline

>Marc,

>I sincerely apologize that your photo was distributed. We have a library
 >of photos of Barack from before the campaign and it seems that your
 >photo got thrown in the mix. We were under the impression that it was a
 >photo that we owned. I have removed it from our library and have
 >contacted a ABC, NBC and CBS to make them aware that we do not own the
 >rights. If you would like I will give them your contact info for them
 >to contact you to purchase it. Let me know what is convenient for you
 >and how we can work it out.

>Thanks

>Katie Hogan

>-----Original Message-----

MPK.0015

EXHIBIT C

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America



Form VA

For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

REGI

VA 1-420-045



EFFECTIVE DATE OF REGISTRATION

SEP 04 2009

Month Day Year

1

Title of This Work ▼

NATURE OF THIS WORK ▼ See instructions

"Barack Obama Photographs Published in 2008" Photos published in newspapers, books

Previous or Alternative Titles ▼

Group Registration/Published Photos, approx. 11 photos

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

Multiple sources, see Form GR/PPH/CON

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

2

NAME OF AUTHOR ▼

a Marc Pokempner

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

1948 living

Was this contribution to the work a "work made for hire"?

☐ Yes

☒ No

Author's Nationality or Domicile
Name of Country

OR Citizen of USA

Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No

☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☒ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

Name of Author ▼

b Marc Pokempner

Dates of Birth and Death

Year Born ▼ Year Died ▼

1948 living

Was this contribution to the work a "work made for hire"?

☐ Yes

☒ No

Author's Nationality or Domicile
Name of Country

OR Citizen of USA

Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☒ No

☐ Yes ☒ No

Pseudonymous? ☐ Yes ☒ No

☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions

☐ 3-Dimensional sculpture

☐ Map

☐ Technical drawing

☐ 2-Dimensional artwork

☒ Photograph

☐ Text

☐ Reproduction of work of art

☐ Jewelry design

☐ Architectural work

3

Year in Which Creation of This Work Was Completed

a 2008

This information must be given Year in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information Month Day Year

ONLY if this work has been published.

May 11 - November 4, 2008
May - November 2008 USA / Kansas

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

Marc Pokempner, 1453 West Addison St.
Chicago, IL 60613

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

SEP 04 2009 NOV 19 2010

ONE DEPOSIT RECEIVED

SEP 04 2009 NOV 19 2010

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

DO NOT WRITE HERE
OFFICE USE ONLY

MORE ON BACK ▶

• Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions.
• Sign the form at line 8.

MPK.0129

DO NOT WRITE HERE

Page 1 of 4

EXAMINED BY W FORM VA

CHECKED BY

CORRESPONDENCE

☒ YesFOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION. Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

N/A

a

6

See Instructions
before completing
this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

N/A

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

N/A

a

7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼

Marc Pokempner/1453 West Addison/Chicago, IL 60613
St.

b

Area code and daytime telephone number 773 525-4567

Fax number ()

Email marc@pokempner.net

CERTIFICATION* I, the undersigned, hereby certify that I am the

check only one ▶

☒ author☐ other copyright claimant☐ owner of exclusive right(s)☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Marc Pokempner

Date

9/1/09

Handwritten signature (X) ▼

X

MPK.0130

Certificate
will be
mailed in
window
envelope
to this
address:

Name ▼

Marc Pokempner

Number/Street/Apt ▼

1453 West Addison St.

City/State/ZIP ▼

Chicago, IL 60613

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 8

SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:

Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-8000

9

CONTINUATION SHEET FOR FORM VA

for Group Registration of Published Photographs

- This optional Continuation Sheet (Form GR/PPh/CON) is used only in conjunction with Form VA for group registration of published photographs.
- This form may not be used as a continuation sheet for unpublished collections. To list individual titles in unpublished collections, use Form CON.
- If you do not have enough space for all the information you need to give on Form VA or if you do not provide all necessary information on each photograph, use this Continuation Sheet and submit it with completed Form VA.
- No more than 50 continuation sheets (or 750 photos) may be used with a single filing fee and Form VA.
- If you submit this Continuation Sheet, clip (do not tape or staple) it to completed Form VA and fold the two together before submitting them.
- Space A of this sheet is intended to identify the author and claimant.
- Space B is intended to identify individual titles and dates of publication (and optional description) of individual photographs.
- Use the boxes to number each line in Part B consecutively. If you need more space, use additional Forms GR/PPh/CON.
- Copyright fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

Form GR/PPh/CON
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

VA 1-420-045



EFFECTIVE DATE OF REGISTRATION

SEP 04 2009

(Month) (Day) (Year)

CONTINUATION SHEET RECEIVED

SEP 04 2009

Page 3 of 4 pages

DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

A

Identification
of Application

IDENTIFICATION OF AUTHOR AND CLAIMANT: Give the name of the author and the name of the copyright claimant in all the contributions listed in Part B of this form. The names should be the same as the names given in spaces 2 and 4 of the basic application.

Name of Author Marc Pokempner

Name of Copyright Claimant: Marc Pokempner

B

Registration
for Group of
Published
Photographs

COPYRIGHT REGISTRATION FOR A GROUP OF PUBLISHED PHOTOGRAPHS: To make a single registration for a group of works by the same individual author, all published within 1 calendar year (see instructions); give full information about each contribution. If more space is needed, use additional Forms GR/PPh/CON. Number the boxes.

- (1) Title of Photograph "1995.12.02 Obama w-Kids", published in The New York Times
Date of First Publication May 11 2008 Nation of First Publication USA
Description of Photograph front page of NYT, Barack Obama shaking kids' hands
- (2) Title of Photograph "1995.11.09 Obama in office", published in The New York Times
Date of First Publication May 11 2008 Nation of First Publication USA
Description of Photograph pg. 18 of NYT, Barack Obama sitting in his office, photo of Herald Washington on wall.
- (3) Title of Photograph "2002.10.01 Obama - Notraqwar", published in The New York Times
Date of First Publication May-October 2008 Nation of First Publication USA
Description of Photograph pg. 19 of NYT; pp. 84, 85 of LIFE's "The American Journey" book of Barack Obama
- (4) Title of Photograph "1995.12.03 Obama Signatures #5", pub. on CNN Video "Barack Obama Plays Hardball"
Date of First Publication May 30 2008 Nation of First Publication USA
Description of Photograph Barack Obama on stage talking w/woman holding pen and sitting man
- (5) Title of Photograph "1995.11.09 Obama Signatures 3", published in The New Yorker
Date of First Publication July 21 2008 Nation of First Publication USA
Description of Photograph pp. 48, 49 of New Yorker, Obama getting signature from older woman in hat.

MPK.0131

B
Registration
for Group of
Published
Photographs
(continued)"Obama's
American
Dream"
"Obama, the
44th Pres"
"Obama's
American
Dream"
"The Making
of Obama"
photo image

C

| | | | | | | | | |
|-------------------|---------------------|--|---------------------------|------------------|-----------------------------|-----|---------------------------|---|
| (6) (6 copy) | Title of Photograph | "2004-03-16 #050", published in LIFE's "The American Journey of Barack Obama" | Date of First Publication | October 1 2008 | Nation of First Publication | USA | Description of Photograph | p. 67 of book, Barack Obama kissing Sasha's hand, at rally, with Michelle Obama holding her |
| (7) (7 copy) | Title of Photograph | "1995-12-02 Barack Reading to Kids #16", pub. in LIFE (see above) | Date of First Publication | October 1 2008 | Nation of First Publication | USA | Description of Photograph | p. 167 of book, Barack Obama reading to kids (3), while sitting on floor |
| (8) (8 copy) | Title of Photograph | "1995-12-02 Obama - Alleyball", pub. in Newsweek's Commemorative: Obama playing ball w/kids pp 54-55 of Newsweek's "Obama's American Dream" | Date of First Publication | November 4 2008 | Nation of First Publication | USA | Description of Photograph | |
| (9) (9 copy) | Title of Photograph | "1995-11-09 Obama + Woman w/beret", published in Multi-Media-Int's (M-M-1) story, Barack walking down street w/older women w/beret and glasses | Date of First Publication | November 4 2008 | Nation of First Publication | USA | Description of Photograph | |
| (10) (10 copy) | Title of Photograph | "1995-12-02 Obama Shaking Hand (2)", pub. in Newsweek's Comm. issue, shaking hand w/woman/hat | Date of First Publication | November 4 2008 | Nation of First Publication | USA | Description of Photograph | |
| (11) (11 copy) | Title of Photograph | "1995-12-02 Obama w-Kids ALT", pub. on ABC Nightline segment photo image | Date of First Publication | February 25 2008 | Nation of First Publication | USA | Description of Photograph | |
| | Title of Photograph | | Date of First Publication | | Nation of First Publication | | Description of Photograph | |
| | Title of Photograph | | Date of First Publication | | Nation of First Publication | | Description of Photograph | |
| | Title of Photograph | | Date of First Publication | | Nation of First Publication | | Description of Photograph | |
| | Title of Photograph | | Date of First Publication | | Nation of First Publication | | Description of Photograph | |

Certificate
will be mailed
to window
envelope to
this address

Name ▼
Marc Pokempner

Number / Street / Apt ▼
1453 West Addison St.

City / State / Zip ▼
Chicago, IL 60613

FORM 100-101
• Complete all sections of application
• Sign your application
• Send to: U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20540-6000

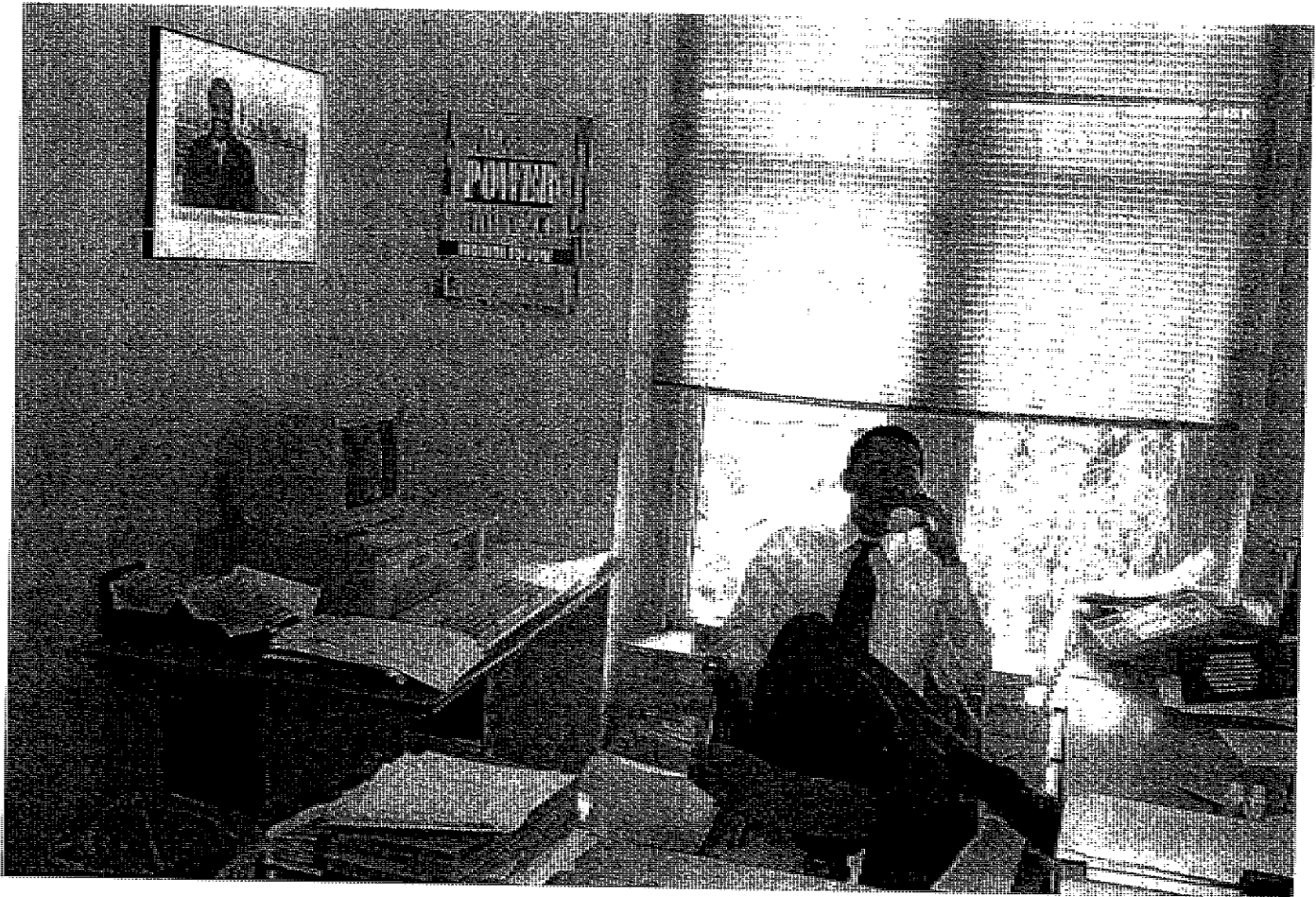
1 Application form
2 Nonreturnable fee to check or
money order payable to Register of
Copyrights
3 Deposit material

NOTE: If you
Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20540-6000



(1)

MPK.0133



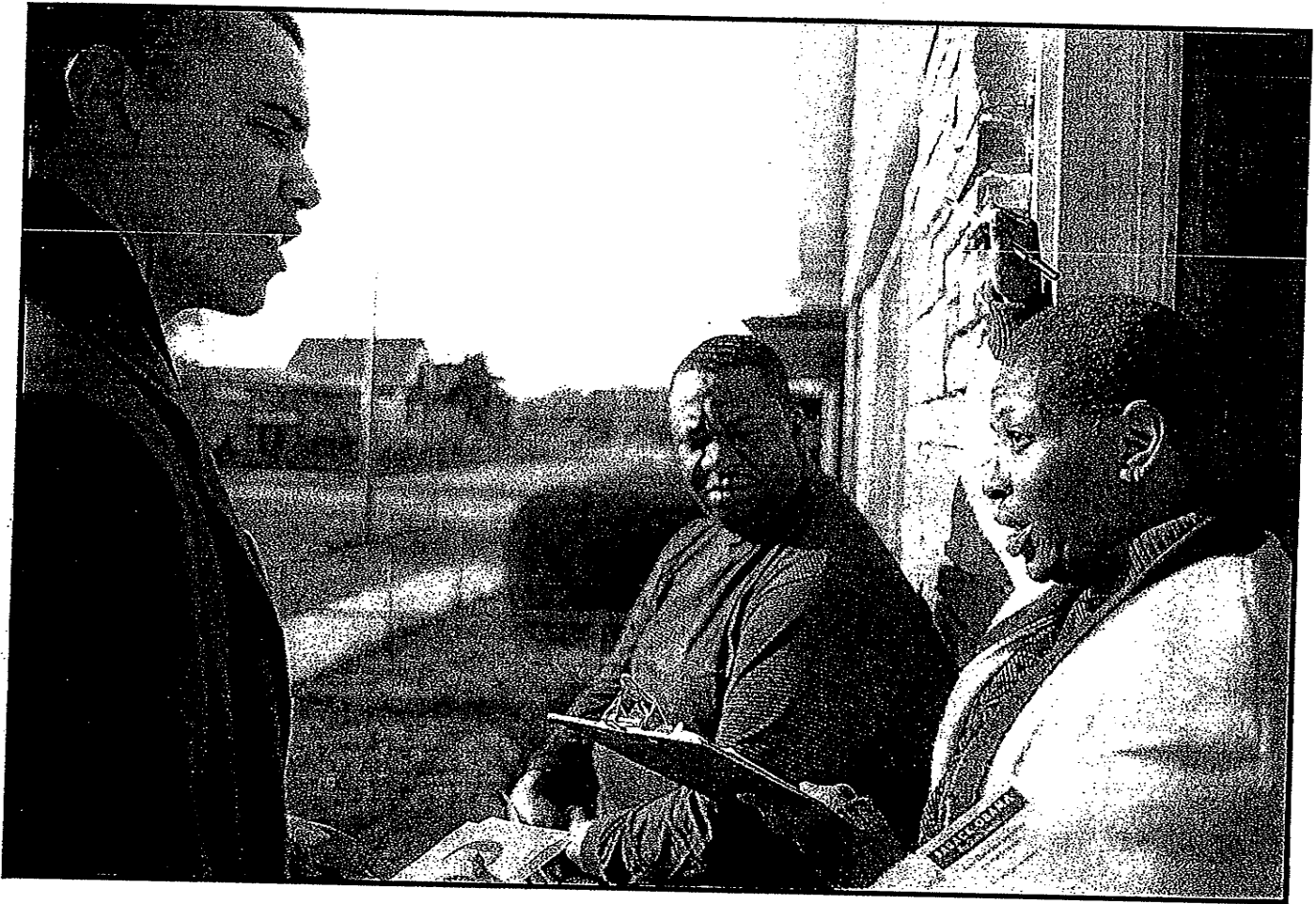
(2)

MPK.0134



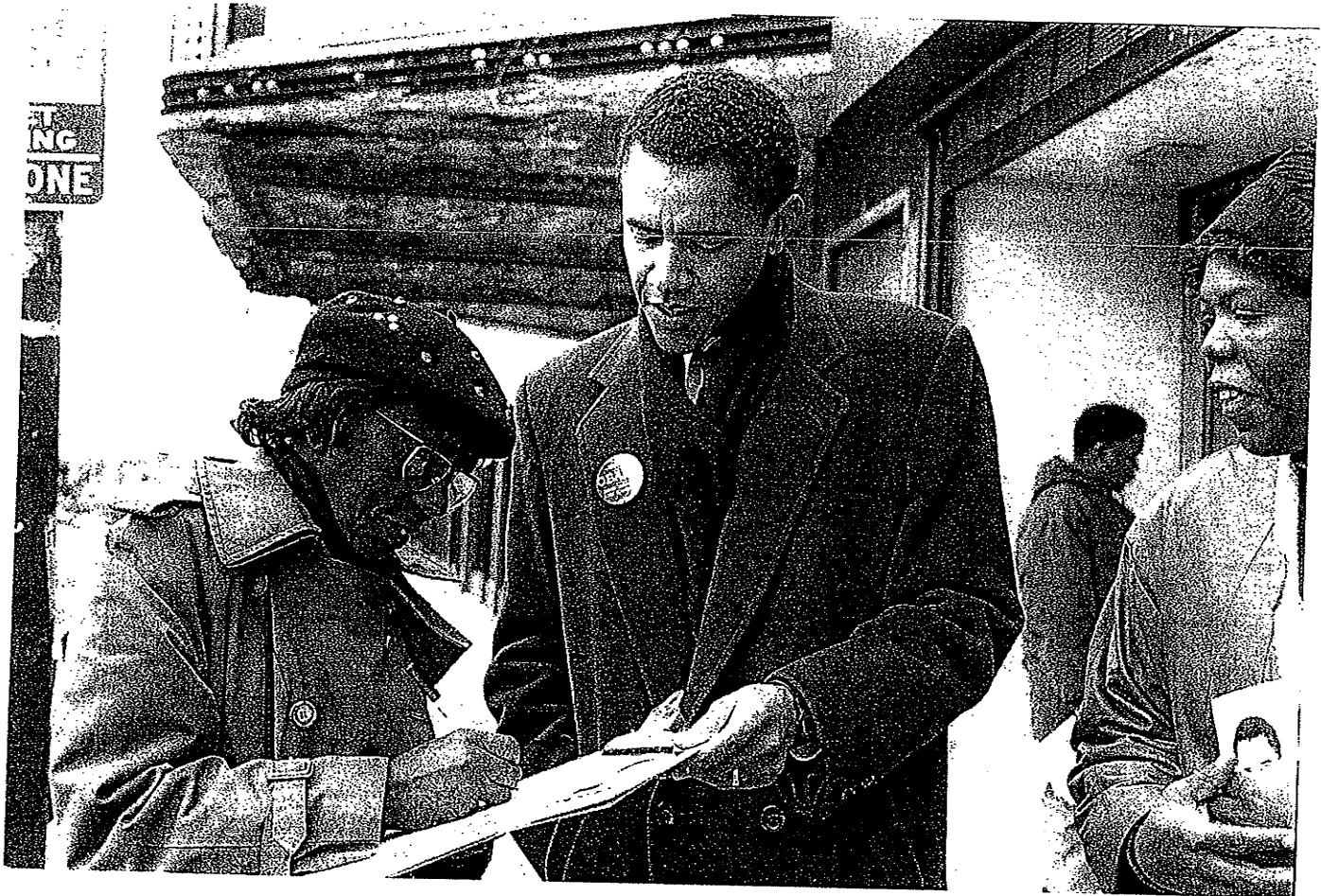
(3)

MPK.0135



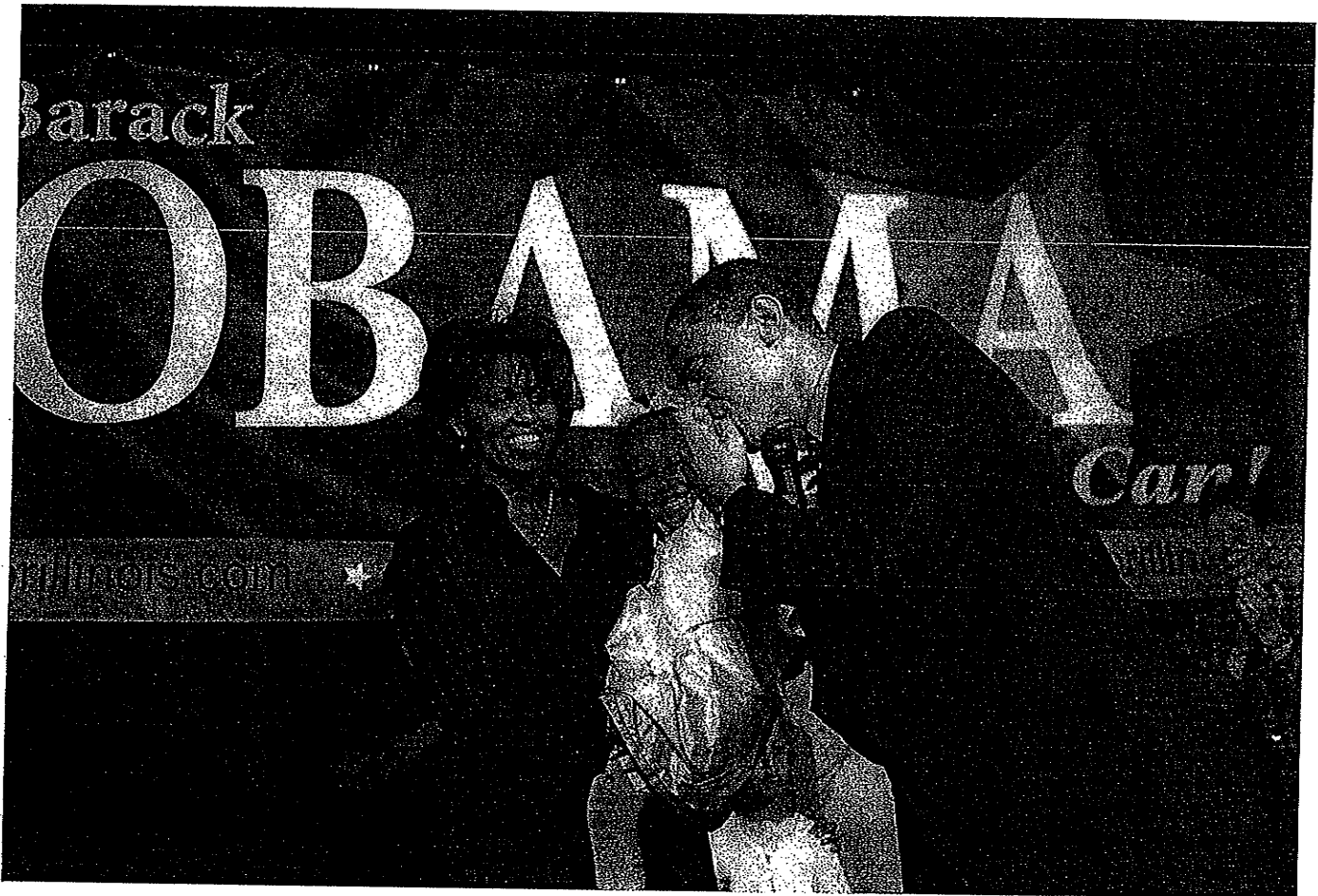
(4)

MPK.0136



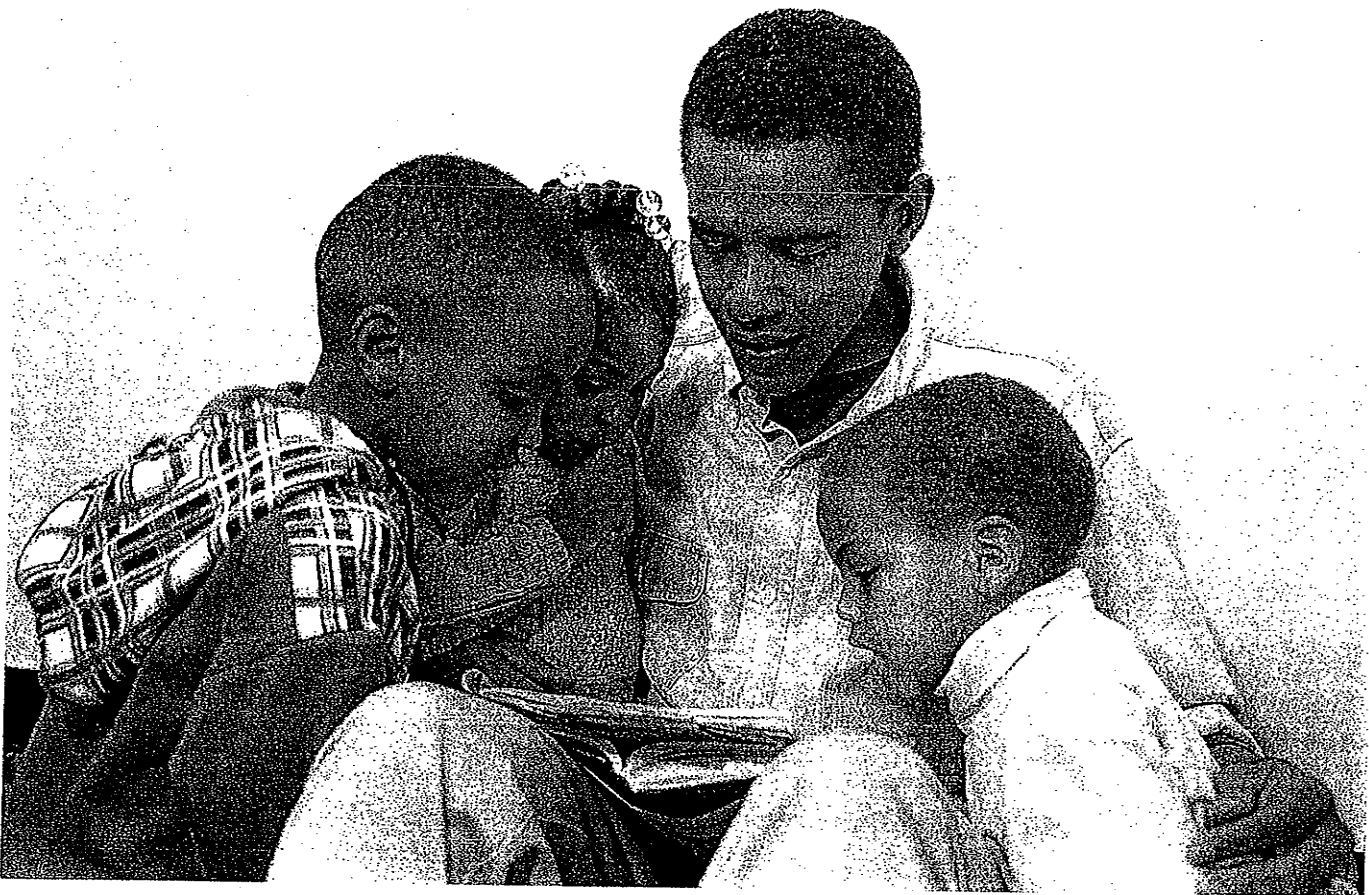
(5)

MPK.0137



(6)

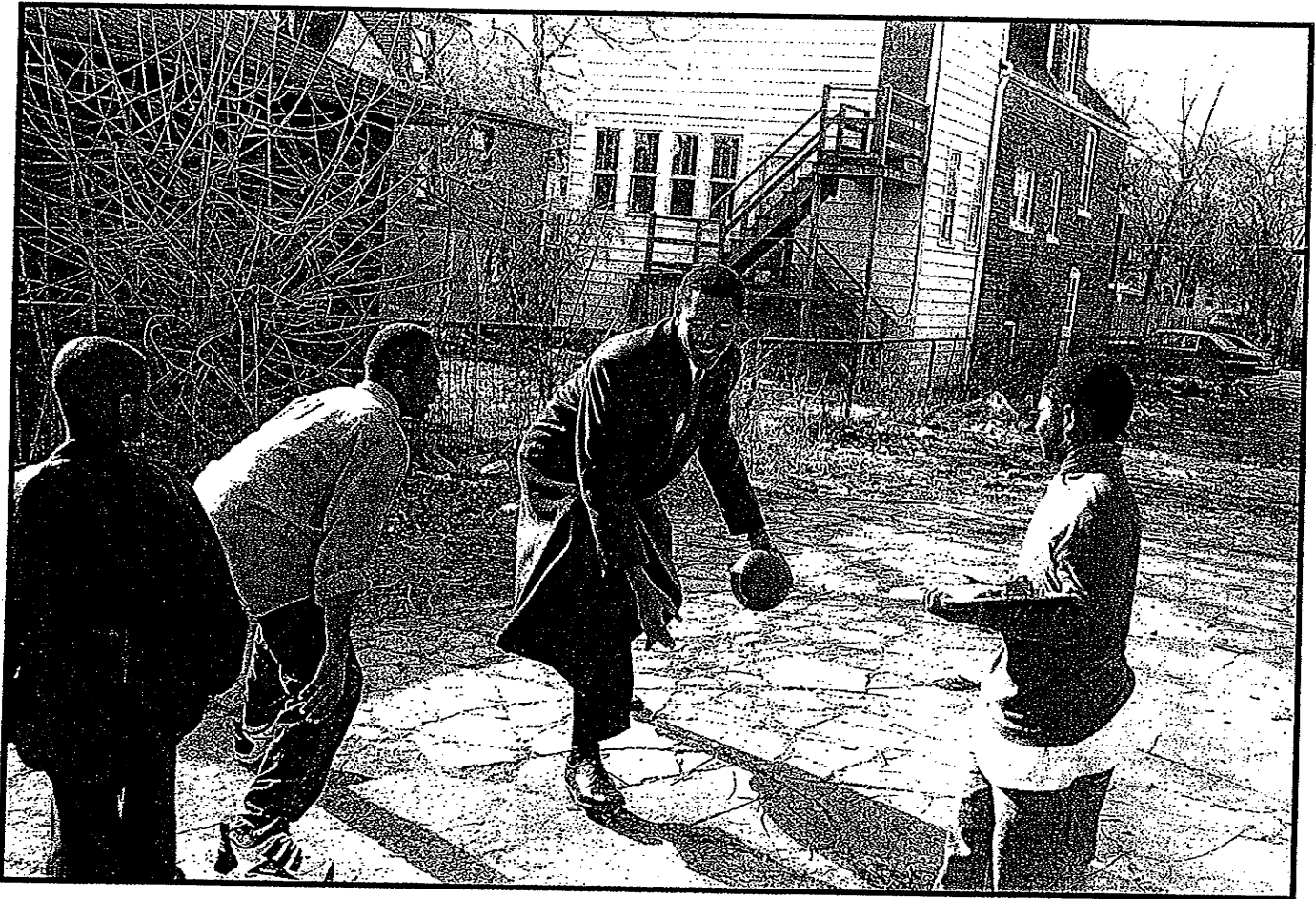
MPK.0138



(7)

MPK.0139

(8)



(8)

MPK.0140



(9)

MPK.0141



(10)

MPK.0142



(11)

MPK.0143

EXHIBIT D

Loading "PLEASE RESPOND : Fw: Obama Photo on Nightline"

3/19/08 10:44 PM

PLEASE RESPOND : Fw: Obama Photo on Nightline

From: Marc PoKempner <mpokempner@igc.org>
To: Katie Hogan
Cc: Green Dan <Dan.Green@abc.com>
Subject: PLEASE RESPOND : Fw: Obama Photo on Nightline
Date: Mar 1, 2008 9:36 AM

Katie -- Please forgive the casual tone in my previous emails - I thought you were the Katie Hogan of the Heartland, who is a long time friend of mine, and an Obama worker as well. I spoke with her and realized that this is not her email. I need to hear from you about this - where did you get my photo, how did you send it to Nightline, has it been sent to other media, etc. I make my entire living by licensing the use of my © copyright photos to all kinds of publications, and need to insure that there's no misunderstanding about the use of this particular picture - which I made for the Reader in 1995, when Barack first ran for the IL State Senate. If you provided it to Nightline or other media in electronic form please send me a copy of the file. thanks ! best regards - Marc

-----Forwarded Message-----

>From: "Green, Dan" <Dan.Green@abc.com>
 >Sent: Feb 28, 2008 1:23 PM
 >To: marc@pokempner.net
 >Subject: Obama Photo on Nightline
 >
 >Marc,
 >
 >I had a brief conversation with the producer from Monday night's piece.
 >She's out in the field at the moment but says the Obama campaign gave
 >her the photo. There was no mention of rights or clearances. Her
 >contact was Katie Hogan. Her email is khogan@barackobama.com.
 >
 >
 >
 >Let me know what she says and we can take it from there.
 >
 >
 >
 >Thanks,
 >
 >
 >
 >Dan Green
 >
 >Senior Producer
 >

MPK.0012

EXHIBIT E

Loading "RE: PLEASE RESPOND : Fw: Obama Photo on Nightline"

3/19/08 10:34 PM

RE: PLEASE RESPOND : Fw: Obama Photo on Nightline

From: "Green, Dan" <Dan.Green@abc.com>
To: Marc PoKempner
Cc: Katie Hogan <khogan@barackobama.com>
Subject: RE: PLEASE RESPOND : Fw: Obama Photo on Nightline
Date: Mar 6, 2008 10:32 PM

Marc,
The photo has been removed from our story.

Let me reassure you that there was no intention to conceal our use of this photo. It was merely a misunderstanding between the producer and the Obama campaign over the rights to the picture.

Myrna Michel from ABC News Rights and Clearances sent you an email this afternoon. Her email address is Myrna.Michel@abc.com. If you have any trouble reaching her, feel free to call me.

Thanks for your patience and our apologies for the misunderstanding.

Best,
Dan
202-222-7124

-----Original Message-----

From: Marc PoKempner [mailto:mpokempner@igc.org]
Sent: Thursday, March 06, 2008 4:42 PM
To: Katie Hogan; Green, Dan
Subject: RE: PLEASE RESPOND : Fw: Obama Photo on Nightline

Katie -- thanks for sending that - but if that is the file you've got, it didn't come from me. It looks like it may have been scanned from a print (I had a personal relationship with Barack and certainly may have given him a print, though I hope it would have been a better print than this appears to be) or from the Reader newspaper where it first appeared (in 1995 I would have supplied them with a print from a negative)- my digital file is not RGB but grayscale, has a black line all the way around it, and is both cleaner tonally and without dust. It would also have my (c) info if it came from me in digital form. Still, it's clearly identified as my photo - and I'm easy to find - just google my name.

So Dan & Katie -- the question is: to whom do I send a bill? If the campaign wants to be able to distribute this and other photos of mine, I'll send them good files - and we'll make a deal. And unless Nightline has some written assurance from the campaign that reproduction rights

EXHIBIT F

Loading "RE: Obama Photo on Nightline.."

3/19/08 10:36 PM

RE: Obama Photo on Nightline..

From: "Michel, Myrna" <Myrna.Michel@abc.com>
To: mpokempner@igc.org
Subject: RE: Obama Photo on Nightline..
Date: Mar 6, 2008 4:26 PM

Dear Marc PoKempner,

We have been informed by the Barack Campaign that they did not have the rights to distribute your photograph of Barack Obama shaking hands with supporters used in the ABC News Nightline segment on 2/25/08. We were unaware that they did not own the rights as we were told it was handout to us and that they owned it. Since we have been made aware of this by the Barack campaign, we have removed the image from our internet site effective immediately. We apologize for the use as we were misinformed by the campaign.

Sincerely,
Myrna Michel

Myrna Michel | Rights & Clearances | ABC News Nightline & News Specials | 212.456.4873 |
47 W. 66th Street, 6th floor, New York, NY 10023

MPK.0017

EXHIBIT G

Loading "Re: Obama Photo on Nightline.."

3/19/08 10:49 PM

Re: Obama Photo on Nightline..

From: Marc PoKempner <mpokempner@igc.org>
To: "Michel, Myrna"
Subject: Re: Obama Photo on Nightline..
Date: Mar 7, 2008 12:04 AM

Dear Myrna Michel - Sorry for the misunderstanding, and that you were misinformed by the campaign, but there's no need to remove the photo - it's my favorite shot of him and shows his charisma long before he was widely known - I'm happy for you to continue to use it.

However, I'm going to insist you pay me for its use on the broadcast, and I'm willing to include rights for the website use with that fee. Are you the person to whom I should address an invoice? Thanks. Marc PoKempner

-----Original Message-----

>From: "Michel, Myrna" <Myrna.Michel@abc.com>
 >Sent: Mar 6, 2008 3:24 PM
 >To: mpokempner@igc.org
 >Subject: Obama Photo on Nightline..

>

>Dear Marc PoKempner,

>

>We have been informed by the Barack Campaign that they did not have the
 >rights to distribute your photograph of Barack Obama shaking hands with
 >supporters used in the ABC News Nightline segment on 2/25/08. We were
 >unaware that they did not own the rights as we were told it was handout
 >to us and that they owned it. Since we have been made aware of this by
 >the Barack campaign, we have removed the image from our internet site
 >effective immediately. We apologize for the use as we were misinformed
 >by the campaign.

>

>Sincerely,

>Myrna Michel

>

>Myrna Michel | Rights & Clearances | ABC News Nightline & News Specials
 >| 212.456.4873 | 47 W. 66th Street, 6th floor, New York, NY 10023

>

>

>

Marc PoKempner, photojournalist

<http://www.pokempner.net>

ph: 773.525.4567 cel: 773.505.4568

Chicago, Illinois, USA

MPK.0020

Loading "RE: PLEASE RESPOND : Fw: Obama Photo on Nightline"

3/19/08 10:34 PM

had been cleared for this photo's use - it's Nightline's responsibility to check with me before broadcasting it. Again - the publication of my photos is how I make a living, and nearly everybody involved in the use of photos understands that and makes arrangements in advance -- but when I discover (by complete coincidence!) an obvious infringement of my copyright, I need to do what's necessary to insure that does not become common practice. Thanks! Marc

-----Original Message-----

>From: Katie Hogan <khogan@barackobama.com>
>Sent: Mar 6, 2008 2:56 PM
>To: Marc PoKempner <mpokempner@igc.org>, Green Dan <Dan.Green@abc.com>
>Subject: RE: PLEASE RESPOND : Fw: Obama Photo on Nightline

>
>
>
>-----Original Message-----

>From: Marc PoKempner [mailto:mpokempner@igc.org]
>Sent: Thursday, March 06, 2008 1:27 PM
>To: Katie Hogan; Green Dan
>Subject: RE: PLEASE RESPOND : Fw: Obama Photo on Nightline

>
>Katie, Dan -- Please let's deal with this asap -- please send me the
>photo, or refer me to someone in the press office of the campaign, and
>the person who deals with permissions at Nightline. Thanks! Marc
>

Marc PoKempner, photojournalist

<http://www.pokempner.net>

ph: 773.525.4567 cel: 773.505.4568

Chicago, Illinois, USA

Member: ASMP - American Society of Magazine Photographers

MPK.0021